

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-219996

**DATE:** September 4, 1985

**MATTER OF:** Desert Dry Waterproofing Contractors

**DIGEST:**

An agency properly determined a bid bond defective and the bid nonresponsive where the bonding agent who signed the bond did not have a valid power of attorney to bind the surety. The protester's lack of negligence does not permit correction of the bond after bid opening to render the bid responsive.

Desert Dry Waterproofing Contractors (Desert Dry) protests the rejection of its low bid as nonresponsive because of a defective bid bond under invitation for bids No. DABT56-85-B-0037, issued by the Army. Desert Dry asserts that because the defective bid bond was not the result of the bidder's negligence, and the bonding agent is willing to correct the defects, Desert Dry should be permitted to submit a valid bid bond after bid opening.

We dismiss the protest.

The Army determined the bond defective because the bonding agent's power of attorney had expired, and the bond was submitted on a form which did not permit issuance of a bond in the amount entered. Desert Dry asserts that it should be permitted to correct the bid bond after bid opening.

A bid bond is a type of security that assures that a bidder will not withdraw its bid within the time specified for acceptance and, if required, will execute a written contract and furnish payment and performance bonds. The purpose of a bid bond is to secure the liability of the surety to the government in the event the bidder fails to fulfill

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these obligations. Montgomery Elevator Co., B-210782, Apr. 13, 1983, 83-1 C.P.D. ¶ 400. The sufficiency of a bid bond depends on whether the surety is clearly bound by its terms. Truesdale Construction Co., Inc., B-213094, Nov. 18, 1983, 83-2 C.P.D. ¶ 591. Under the law of suretyship, no one incurs a liability to pay the debts or to perform the duties of another unless that person expressly agrees to be bound. Andersen Construction Co.; Rapp Constructors, Inc., 63 Comp. Gen. 248 (1984), 84-1 C.P.D. ¶ 279.

When required, a bid bond is a material part of a bid and therefore must be furnished with the bid. Baucom Janitorial Services, Inc., B-206353, Apr. 19, 1982, 82-1 C.P.D. ¶ 356. To permit waiver of a bid bond requirement or of a failure to furnish a proper bid bond would make it possible for a bidder to decide after opening whether or not to have its bid rejected, cause undue delay in effecting procurements, and create, through the subjective determinations by different contracting officers of whether waiver is appropriate, inconsistencies in the treatment of bidders. Minority Enterprises, Inc., B-216667, Jan. 18, 1985, 85-1 C.P.D. ¶ 57. When a bidder supplies a defective bond, the bid itself is rendered defective and must be rejected as nonresponsive. Hydro-Dredge Corporation, B-214408, Apr. 18, 1984, 84-1 C.P.D. ¶ 400. The determinative question as to the acceptability of a bid bond is whether the bid documents establish that the bond could be enforced if the bidder did not execute the contract. It is not proper to consider the reasons for the nonresponsiveness, whether due to mistake or otherwise. A.D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 C.P.D. ¶ 194.

In this case, the bid bond was signed by a bonding agent who lacked a valid power of attorney to bind the surety. The Army properly rejected the bid as nonresponsive based on the submission of an inadequate bid bond. Hydro-Dredge Corporation, B-214408, supra. Desert Dry's contention that since the defect was not due to its negligence, Desert Dry should be permitted to reform the bond constitutes an impermissible attempt to render a nonresponsive bid responsive after bid opening through change or explanation. Minority Enterprises, Inc., B-216667, supra.

We have reached this decision on the basis of the protester's submission, without requesting an agency report, since the protest on its face is legally without merit. Design Engineers, B-214658, Apr. 10, 1984, 84-1 C.P.D. ¶ 408.

A handwritten signature in black ink, appearing to read 'R. Strong', with a large, stylized initial 'R'.

Robert M. Strong  
Deputy Associate General  
Counsel